

### REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed September 30, 2005. Reconsideration and allowance of the application and pending claims are respectfully requested.

#### **I. Claim Rejections - 35 U.S.C. § 102(b)**

Claims 1, 2, 6-11, 13-19, 21, 22, 24-27, and 29-32 have been rejected under 35 U.S.C. § 102(b) as being anticipated by *McEwan* (U.S. Patent No. 5,766,208). Applicants respectfully traverse this rejection.

Regarding claims 1-2 and 6-11, Applicants submit that *McEwan* does not teach or suggest at least "a control system to track the position of the scanning antenna as the scanning antenna transmits the microwave signal," as recited in independent claim 1.

Rather, *McEwan* discloses a heart and respiratory monitor, where "antennas in the heart and respiratory monitor are formed of simple wires that may be embedded in a mat, mattress or seat back along with the circuitry to provide a low cost life monitor, *i.e.*, to determine whether the person lying on the mat or sitting on the chair is still alive, or when that person's life signs have changed." Cols. 6-7, lines 61-3. As such, *McEwan* does not teach or suggest a scanning antenna that changes position as it scans and therefore fails to also teach or suggest "a control system to track the position of the scanning antenna as the scanning antenna transmits the microwave signal." Accordingly, claim 1 and claims 2 & 6-11 (which depend from claim 1) are allowable over *McEwan*, for at least that reason.

Likewise, *McEwan* fails to teach or suggest "wherein the control system samples the reflected signal at discrete positions of the scanning antenna and compiles the sampled data to produce the graphical plot," as recited in claim 7; and "wherein the position along the horizontal scanning axis of the at least one subject is ascertained from the graphical plot," as recited in claim 9, among other features.

Regarding claims 13-19 and 21-22, Applicants submit that *McEwan* fails to teach or suggest at least "means for tracking the position of the means for transmitting as the

means for transmitting transmits the microwave signal," as recited in independent claim 13.

In contrast, *McEwan* discloses a heart and respiratory monitor, where "antennas in the heart and respiratory monitor are formed of simple wires that may be embedded in a mat, mattress or seat back along with the circuitry to provide a low cost life monitor, *i.e.*, to determine whether the person lying on the mat or sitting on the chair is still alive, or when that person's life signs have changed." Cols. 6-7, lines 61-3. As such, *McEwan* does not teach or suggest a scanning antenna that changes position as it scans and therefore, also fails to teach or suggest a "means for tracking the position of the means for transmitting as the means for transmitting transmits the microwave signal." Accordingly, claim 13 and claims 14-19 and 21-22 (which depend from claim 13) are allowable over *McEwan*, for at least that reason.

Likewise, *McEwan* fails to teach or suggest "means for sampling the received reflected microwave signal at at least one discrete position of the means for transmitting," as recited in claim 16; "means for detecting processes sampled data from the received reflected microwave signal to remove an undesired signal caused by self-induced motion of the system," as recited in claim 17; and "wherein two subjects are positioned behind a reflective surface in the target area and the respiration signature of each subject is detected," as recited in claim 22, among other features.

Regarding claims 24-27 and 29-32, Applicants submit that *McEwan* fails to teach or suggest at least "transmitting a microwave signal across the target area along a horizontal scanning axis" and "tracking the position at which the microwave signal is transmitted along the horizontal scanning axis," as recited in claim 24.

Diversely, *McEwan* discloses a heart and respiratory monitor, where "antennas in the heart and respiratory monitor are formed of simple wires that may be embedded in a mat, mattress or seat back along with the circuitry to provide a low cost life monitor, *i.e.*, to determine whether the person lying on the mat or sitting on the chair is still alive, or when that person's life signs have changed." Cols. 6-7, lines 61-3. As such, *McEwan* does not teach or suggest a scanning antenna that changes position as it scans and therefore, also fails to teach or suggest "transmitting a microwave signal across the target area along

a horizontal scanning axis" and "tracking the position at which the microwave signal is transmitted along the horizontal scanning axis." Accordingly, claim 24 and claims 25-27 and 29-32 (which depend from claim 24) are allowable over *McEwan*, for at least that reason.

Likewise, *McEwan* fails to teach or suggest "sampling the received reflected signal at at least one discrete position along the horizontal scanning axis," as recited in claim 27; "ascertaining the position along the horizontal scanning axis of at least one subject from the graphical plot," as recited in claim 30; and "wherein two subjects are positioned behind a reflective surface in the target area and the respiration signature of each subject is detected," as recited in claim 32, among other features.

## II. Claim Rejections - 35 U.S.C. § 103(a)

In the Office Action, claims 2-5, 12, 20, 28, and 33 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *McEwan* in view of the article to Chuang et al. ("Microprocessor-Controlled Automatic Clutter-Cancellation Circuits for Microwave Systems to Sense Physiological Movements Remotely through the Rubble."). It is well-established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

The Office Action states that the Chuang reference is used to disclose absorbers that allegedly may be used in the *McEwan* system. Without discussing the merits of the motivation for making this combination, all of the claimed features of independent claims 1, 13, and 24 are not taught and suggested by *McEwan*, as previously discussed. Further, the cited art of Chuang fails to cure the deficiencies of the *McEwan* reference in suggesting or teaching all of the claimed features in claims 2-5, 12, 20, 28, and 33 (which depend from respective independent claims 1, 13, and 24). Therefore, a *prima facie* case establishing an obviousness rejection by the proposed combination of *McEwan* with Chuang has not

been made. Therefore, the rejections of claims 2-5, 12, 20, 28, and 33 should be withdrawn.

Further, the proposed combination of *McEwan* in view of *Chuang* fails to teach or suggest "a digital shaft encoder to provide positional information of the scanning antenna," as recited in claim 5; "wherein the scanning antenna is being operated in a hand held mode," as recited in claim 12; "wherein the position along the horizontal scanning axis of the at least one subject is ascertained from the graphical plot," as recited in claim 20; and "wherein the transmitting step is being performed in a hand held mode," as recited in claim 33, among other features.

### CONCLUSION

Applicants respectfully submit that the pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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